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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,921	07/15/2003	John Conan Doyle II	13544.0002.NPUS00	7148

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EXAMINER

SMITH, KIMBERLY S

ART UNIT PAPER NUMBER

3644

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/619,921

Applicant(s)

DOYLE, JOHN CONAN

Examiner

Kimberly S Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 34-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 20-28, 31 and 33 is/are rejected.
- 7) ☒ Claim(s) 15-19, 29, 30 and 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/23/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 34-46 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 11/16/04.

### *Specification*

2. The disclosure is objected to because of the following informalities: [0042], line 1: replace “amplifiers” with - -amplifies- -; [0045], line 1: insert - -of- - following “extent”, line 10: replace “measurement” with - -measurements- -. Appropriate correction is required.

3. The incorporation of essential material in the specification (at paragraph 0040) by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the processor selects and area on the animal to apply a medical product and determines subcutaneous fat with the ultrasound transducer.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 7-13, 20-24, 26-28, 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Scofield, US Patent 5,483,441.

Scofield discloses a system for measuring a physical feature of an animal comprising a light source (72, 74) and an optical device (18, 20) opposing the light source and obtaining an image that includes a silhouette of the first portion of the animal; comprising a housing unit having at least one sidewall with the optical device mounted thereon (column 5, line 10); including at least one entry port formed at an end of the unit (as viewed in Figure 1A); comprising a device arranged adjacent the animal for positioning within the housing unit (i.e. 30); wherein the image includes at least one silhouette of at least a portion of the one leg, wherein the optical device is a photographic camera.

Regarding claim 9, it is inherent in the structure of a photographic camera that it comprises a lens for limiting the field of view.

Regarding claims 10 and 11, Scofield discloses a processor (43) for determining a measurement of the physical feature from the image.

Regarding claim 12, Scofield discloses the measurement includes the pelvic width of the animal.

Regarding claim 13, Scofield discloses the processor comprising a computer (4) inherently having software and data storage.

Regarding claim 24, Scofield discloses the means for determining the at least one physical dimension comprises determining an approximate distance between a pair of legs

Regarding claim 27, Scofield discloses the means for determining the approximate skeletal trunk length (326).

Regarding claim 28, Scofield discloses through the use of a processor a means for scaling the approximate distance of the skeletal trunk length.

Regarding claim 31, Scofield discloses a means for determining an approximate width of a second portion of the animal.

7. Claims 1-3, 7-13, 20-23, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Petersen et al., U.S. Patent 4,939,574 (Petersen).

Petersen discloses a system for measuring a physical feature of an animal comprising a light source (14) backlighting a first portion of the animal and an optical device (18) opposing the light source for obtaining an image that includes a silhouette; having a housing unit with at least one sidewall (1a) with a light source mounted thereon; comprising at least one entry port formed at the end of the unit; wherein the image includes at least one silhouette of at least one portion of one leg; wherein the optical device is a photographic camera.

Regarding claim 9, it is inherent in the structure of a photographic camera that it comprises a lens for limiting the field of view.

Regarding claims 10, Petersen discloses a processor coupled to the optical device (20) for determining a measurement of the physical feature from the image.

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Regarding claim 12, Petersen discloses the measurement includes a width of the leg.

Regarding claim 13, Petersen discloses the processor comprises a computer (20) inherently having software and data storage.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen et al., US Patent 4,939,574 (Petersen) in view of Eom, US Patent 6,639,352.

Petersen discloses the device as claimed including the light source comprising a plurality of monochromatic lights in an array. However, Petersen discloses the claimed invention except that a linear light source of fluorescent lamps are used instead of LEDs. Eom shows that LED and linear light sources are equivalent structures known in the art. Therefore, because these two backlighting light sources were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a monochromatic array of fluorescent lamps for monochromatic LEDs.

10. Claims 14 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen as applied respectively to claims 10 and 20 above in view of Stouffer, US Patent 4,785,817.

Petersen discloses the invention substantially as claimed with the exception of the processor selecting an area to determine subcutaneous fat with an ultrasound transducer. Stouffer teaches within the same field of endeavor the use of an ultrasound transducer to determine the subcutaneous fat within an animal to provide a more accurate grading of the animal. It would have been obvious to use the processor of Stouffer in conjunction with an ultrasound transducer for determining the fat thickness in a selected area to provide for more accurate grading of the animal.

*Allowable Subject Matter*

11. Claims 15-19, 29, 30 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With respect to claims 29 and 30, these limitations have been regarded in light of 35 USC 112(6) means-plus-function language thereby including what the Applicant has disclosed within the Specification of the instant application and their equivalents.

12. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach the use of a backlighting imaging system for determining a physical feature of an animal using ultrasound transducers arranged substantially vertical to the animal for determining the approximate height or width of the animal. While Doyle, US Patent 6,591,221 discloses the use of ultrasound transducers to determine the height of an animal, this device is not used in conjunction with a backlighting measurement system and a combination of

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the cited references and the invention taught by the Doyle '221 reference would require the use of improper hindsight.

***Conclusion***


13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Liu et al (US 5,339,815).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss

  
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